

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

HERMÈS INTERNATIONAL and
HERMÈS OF PARIS, INC.,

Plaintiffs,

v.

MASON ROTHSCHILD,

Defendant.

No. 22-cv-00384-JSR

ECF Case

**DECLARATION OF MASON
ROTHSCHILD IN OPPOSITION
TO PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

I, MASON ROTHSCHILD, hereby declare as follows:

1. I am an artist, entrepreneur, business owner, and the defendant in this case.
2. I submit this declaration in opposition to Plaintiffs' Motion for Summary Judgment, and in further support of my own Motion for Summary Judgment, based on my personal knowledge of the facts and statements contained herein.
3. On several occasions, I have hired a designer named Mark Berden to provide high-level assistance on my art projects. I became aware of and contacted Mr. Berden through Fiverr (www.fiverr.com), an online marketplace for freelancers, in or around March 2021. Mr. Berden is located in Slovenia as far as I am aware. Most of our interactions have been by text message or email, with infrequent phone calls. I put Mr. Berden's name in my phone as "Mark Design" because I did not initially know his last name, and I never really had occasion to need to know his last name. At my deposition, I could not recall Mr. Berden's last name, and I had to look through communications with him following my deposition to find it. I also did not recall

that I had a physical address for Mr. Berden until Plaintiffs put his address in their amended initial disclosures.

4. I hired Mr. Berden to assist me with several projects, including my *Baby Birkin* and *MetaBirkins* NFT art projects. Mr. Berden worked at my direction at all times, and I had final approval over all of his work that I requested. In connection with *MetaBirkins*, Mr. Berden assisted me in designing and generating the final *MetaBirkins* images, and I had final approval over the *MetaBirkins* artworks. Although I casually referred to Mr. Berden as my “partner” in our text messages, I had no partnership agreement with Mr. Berden, and I paid him a flat rate up front as compensation for his work assisting me in creating the 100 *MetaBirkins* images that I released.

5. There has never been any physical asset or merchandise associated with my *MetaBirkins* art project.

6. In or around October 2021, I had a private, confidential conversation with the former CEO of a large fashion distributor who told me that he was working on getting me a meeting with Hermès to discuss a potential collaboration.

7. Terminal 27, the store and cultural center of which I am an owner, co-founder, and Chief Marketing Officer, as a rule does not sell products made with animal fur (other than wool, which we do not consider to be the same as animal fur because the collection of wool generally does not harm the sheep). In October 2021, *Vogue* magazine named Terminal 27 one of the six “Best Fashion Boutiques in the Country.” <https://www.vogue.com/article/fashion-boutiques-around-the-country>.

8. I am the first artist signed for agency representation by Creative Artists Agency (CAA) in their web3 department. CAA is one of the largest and top talent agencies in the United

States. *See, e.g.*, https://en.wikipedia.org/wiki/Creative_Artists_Agency. I also am represented as an artist by Electric Feel, a global entertainment company that is “home to an A-list roster of musical icons and rising superstar artists, producers, songwriters, brands, and partners.” <https://www.electricfeellent.com/about>.

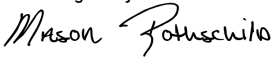
9. I did not list or offer for sale *MetaBirkins* on OpenSea, Rarible, LooksRare, or Coinbase. These marketplaces automatically listed *MetaBirkins* after the associated NFTs were minted, as they do with any NFT. Zora is a more curated marketplace that manually selects the NFT collections that it lists. I contacted Zora to request that they list *MetaBirkins*, which they did for a brief period before removing them; I assume they removed *MetaBirkins* in response to the communication they received from Hermès.

10. Gasoline is the name of my web3 art studio, and gasoline.xyz is the domain name that we own.

11. Documents brought to my attention this week have confirmed my deposition testimony regarding the screenshots that I produced labeled Rothschild007790 and Rothschild007944. Those documents were drafts sent to me by one of my developers, which I rejected, for the *MetaBirkins* NFT minting process. The whitelist page that was actually used in the *MetaBirkins* NFT minting process did not contain the word “Birkin” and is shown in the exhibit attached to the Declaration of Truman Sacks dated October 19, 2022.

12. During my deposition, I could not recall my exact communications with Twitter user MAKISA. I subsequently reviewed and produced my private messages with her, which refreshed my recollection that I gave her my phone number, and she called me. I explained the situation to her and told her that I would give her a whitelist spot for a future release, and MAKISA was happy that I gave her my number to speak about it.

Dated: October 21, 2022
Los Angeles, California

DocuSigned by:

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Sonny Estival p/k/a Mason Rothschild